

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRAIG SKOTNICKI, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FACEBOOK, INC., and CAMBRIDGE
ANALYTICA,

Defendants.

Case No.: 1:18-cv-00655-RGA

JURY TRIAL DEMANDED

MOTION OF PLAINTIFF FOR PRESERVATION ORDER

Plaintiff Craig Skotnicki (the “Movant”), by and through his undersigned attorneys, respectfully moves this Honorable Court for entry of an Order preserving certain documents (the “Preservation Order”) held or controlled by Cambridge Analytica Holdings LLC (“Holdings”), in the form provided hereto. In support of this Motion, Movant states as follows:

Background

1. Movant filed this action on April 10, 2018 [D.I. No. 1], on behalf of himself and similarly situated individuals who are registered users of Facebook, Inc. (“Facebook”) and whose personal information was improperly and without authorization accessed and/or obtained by Defendant Cambridge Analytica.

2. In the Complaint, Movant named “Cambridge Analytica” as a Defendant. Cambridge Analytica is an umbrella term that encompasses Holdings, Cambridge Analytica LLC (“CA LLC”), Cambridge Analytica Commerce LLC (“Commerce”), and Cambridge Analytica Political LLC (“Political” and, together with Holdings, CA LLC, Commerce, an Political, the “Cambridge Entities”). Movant’s intent, in naming Cambridge Analytica, was to cover all the Cambridge Entities in its allegations and claims.

3. Holdings is a privately held limited liability company organized under the laws of the State of Delaware, incorporated on May 9, 2014. Holdings' registered agent for service of summons is The Corporation Trust Company, 1209 Orange Street, Corporation Trust Center, Wilmington, DE 19801. According to *The Guardian*, hedge fund billionaire Robert Mercer funded Holdings, which created and initially ran CA LLC.¹

4. On May 17, 2018, CA LLC filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code [D.I. No. 18]. That bankruptcy proceeding is captioned, *In re Cambridge Analytica LLC*, No. 18-11500-SHL (Bankr. S.D.N.Y. May 17, 2018). In its petition, Cambridge Analytica states that, in the last eight (8) years, it operated as Commercial and Political. Movant alleges that Commercial and Political are divisions of Cambridge Analytica and share the same website: <https://cambridgeanalytica.org>.

5. Movant is seeking relief from the automatic stay in the CA LLC bankruptcy case for purposes of amending the Complaint to clarify that Holdings, CA LLC, Commercial, and Political are each Defendants and to supplement the factual allegations to support naming each of those entities as Defendants. Once relief from the automatic stay is granted, Movant will file an Amended Complaint or move to amend the Complaint.

6. Furthermore, Movant has also named SCL Group Limited ("SCL Group"), formerly known as Strategic Communications Laboratories Ltd, as a defendant in the Amended Complaint. SCL Group is a British company registered with the UK Companies House in 2005. Movant likewise named SCL Elections Ltd ("SCL Elections") a British company, incorporated on October 17, 2012, and SCL USA Inc. ("SCL USA"), a privately held company incorporated under the laws of the State of Delaware on April 22, 2104, as defendants in the Amended

¹ <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>

Complaint. SCL USA is a wholly owned subsidiary of SCL Elections. Movant alleges in the Amended Complaint that SCL USA is the alter ego of SCL Group. Movant further alleges that the SCL entities created one or more of the Cambridge Entities.

7. On May 17, 2018, SCL USA filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York. SCL Group and SCL Elections have also sought relief in the High Court of Justice, Business and Property Courts of England and Wales, and Insolvency and Companies List (ChD) on May 2, 2018. Reports indicate the Cambridge Entities and SCL entities have ceased operations.

8. Only Holdings of the Cambridge Entities has not sought relief under chapter 7 of title 11 of the United States Code, and, on information and belief, is not a party to any bankruptcy proceeding.

9. In August 2017, a company called Emerdata Ltd. ("Emerdata") was incorporated in the United Kingdom. Movant is informed and believes that two founders of the SCL Group and the Cambridge Entities are now directors of Emerdata, the Chairman of SCL Group and the Cambridge Entities is currently a director of Emerdata, and the acting CEO of SCL Group and the Cambridge entities is currently a director of Emerdata. Emerdata has close ties to the Cambridge Entities, including to Holdings, and to the SCL entities.

Basis for Relief

10. Movant submits that a Preservation Order is necessary in this case for purposes of preserving discoverable evidence held by Holdings. See *Capricorn Power Co. Inc. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 434 (W.D. Pa. 2004) ("[I]t is important to note that a motion for a preservation order can be granted with regard to all items of evidence which are

discoverable in accordance with Federal Rule of Civil Procedure 26(b)(1), without the necessity of establishing that the evidence will be necessarily be relevant and admissible at trial.”). There is a three part balancing test a Court will consider when deciding a motion to preserve documents:

1) the level of concern the court has for the continuing existence and maintenance of the integrity of the evidence in question in the absence of an order directing preservation of the evidence; 2) any irreparable harm likely to result to the party seeking the preservation of evidence absent an order directing preservation; and 3) the capability of an individual, entity, or party to maintain the evidence sought to be preserved, not only as to the evidence’s original form, condition or contents, but also the physical, spatial and financial burdens created by ordering evidence preservation.

Id. at 433-4.

11. Movant is informed and believes that a Chapter 7 Trustee has been appointed in the Cambridge Analytica bankruptcy case. Along with the present Motion, Movant intends to seek relief in the United States Bankruptcy Court for the Southern District of New York for leave to serve a records preservation subpoena on the Chapter 7 Trustee for the Cambridge Entities in bankruptcy and SCL USA, for purposes of preserving documents related to this case held or controlled by the debtors (i.e., Cambridge Analytica, Commercial and Political, and SCL USA). However, there is legitimate concern regarding the preservation of documents and other evidence at Holdings. Movant has no current contact with Holdings. The formation of Emerdata, an entity in the same business arena as the Cambridge Entities and formed by the same people who formed the Cambridge Entities, raises concerns that Holdings may not have current leadership and may, in fact, be in the process of being abandoned.

12. Movant will be irreparably harmed if the Motion is not granted and Holdings is not ordered to preserve documents and other evidence. Holdings, as the parent of the Cambridge

Entities, likely has evidence germane to the claims in this case. To the extent that evidence is lost through abandonment or other spoliation, it may be lost to Movant forever.

13. The evidence sought to be preserved is listed in **Exhibit A** to this Motion. As shown on Exhibit A, the documents that Movant seeks to preserve are relevant to the claims in this case and it is not an onerous task for Holdings to “maintain the evidence sought to be preserved, not only as to the evidence’s original form, condition or contents, but also the physical, spatial and financial burdens created by ordering evidence preservation.” *Id.*

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WHEREFORE, Movant requests that this Honorable Court enter a Preservation Order in the form attached preserving the categories of documents described in Exhibit A to this Motion.

Dated: May 23, 2018

CROSS & SIMON LLC

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